

1 Jack Russo (Cal. Bar No. 96068)
2 Christopher Sargent (Cal. Bar No. 246285)
3 COMPUTERLAW GROUP LLP
4 401 Florence Street
5 Palo Alto, CA 94301
(650) 327-9800 office
(650) 618-1863 fax
jrusso@computerlaw.com
csargent@computerlaw.com

6 Attorneys for Third Parties
7 THEODORE KRAMER and
8 THOMAS SCARAMELLINO

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 **Six4Three, LLC**, a Delaware limited liability
12 company,

13 Plaintiff;

14 v.

15 **Facebook, Inc.**, a Delaware corporation;
16 **Mark Zuckerberg**, an individual;
17 **Christopher Cox**, an individual; **Javier**
18 **Olivan**, an individual; **Samuel Lessin**, an
individual; **Michael Vernal**, an individual;
Ilya Sukhar, an individual; and **Does 1-50**,
inclusive,

19 Defendants.

FILED
SAN MATEO COUNTY

APR 15 2019

CLERK OF SUPERIOR COURT


CLERK

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**THIRD PARTY THOMAS SCARAMELLINO AND
THEODORE KRAMER'S OPPOSITION TO
DEFENDANT FACEBOOK, INC.'S MOTION TO
SEAL; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

CIV533328
MPAO

Memorandum of Points and Authorities in Oppo
1766076



RECEIVED
APR 15 2019
SUPERIOR COURT
CIVIL DIVISION

1 INTRODUCTION.

2 Facebook's broad, unsupported Motion to Seal, copy-pasted from their previous
3 Motions to Seal, should be denied. Facebook makes no attempt to justify the sealing of all but
4 particularized sections of Exhibit 1 of the Abrahamson Declaration, falling short of its burden to
5 justify the sealing of what should otherwise be a public court record. Facebook also improperly
6 seeks to seal information long in the public domain. Accordingly, the Motion should be denied.

7 ARGUMENT

8 **I. FACEBOOK FAILS TO MEET ITS BURDEN TO SEAL THE MATERIALS.**

9 **A. Facebook Only Attempts to Show Good
10 Cause with Regards to Specific Parts of One Exhibit.**

11 Facebook's so-called "good cause" for sealing at best only applies to portions of only two
12 of the nearly seven pages of material it moves to seal. While portions of Exhibit 1 to the
13 Abrahamson Declaration cite to the Declaration of David Godkin in Opposition to the Individual
14 Defendants' Anti-SLAPP Motion, the entirety of Exhibit 2 contains no such citations.
15 Furthermore, the Declaration of Zachary Abrahamson in Support of Facebook's Motion to seal
16 does not even address the "good cause" raised in the Motion to Seal, containing only a
17 boilerplate statement with no discussion or citation to the Confidential and Sealed Information
18 implicated. Abrahamson Declaration ¶ 2. Without a more particularized sealing request,
19 Facebook should not be allowed to seal materials where no good cause is shown for all of their
20 contents. Universal City Studios, Inc. v. Superior Court, 110 Cal.App.4th 1273, 1284 (2003)
21 (finding that Defendant could not seal a Settlement Agreement where it presented no evidence
22 that the disclosure of the substantive provisions of the agreement, as opposed to already-redacted
23 financial terms, would prejudice any legitimate confidential business practice.)

24 **B. Facebook Protection of Privacy is Not a Basis to Seal Entire Exhibits.**

25 Facebook presents no applicable law and none exists for overbroad redactions; none are
26 necessary to protect its purported third party information, particularly where redactions
27 specifically tailored to that purpose might suffice. The California Rules of Court require
28 particularized redaction of Social Security Numbers and Financial Account Numbers when

1 necessary. Cal. Rules. Court Rule 1.201. If Facebook is concerned about the privacy of these
2 individuals, it would have already applied this standard to the phone numbers and email
3 addresses, as it did in the January 8, 2019 Declaration of Laura Miller in Support of Motion to
4 Open Discovery and Compel. However, at least one of those individuals posts that same phone
5 number publicly on her LinkedIn profile. This “reason” is nothing but a creative attempt to
6 justify overbroad redactions that Facebook knows are unwarranted.

7 **C. Facebook Does Not Show Good Cause**
8 **Regarding the Redacted Portions of its Memorandum**

9 Facebook makes no attempt whatsoever to explain its redactions to the Memorandum of
10 Points and Authorities in Support of its *Ex Parte* Application for an Order Shortening Time for
11 Depositions. The redacted portions receive no treatment at all in either the Motion to Seal or the
12 Declaration of Zachary Abrahamson in Support thereof. Where no good cause is shown, and
13 indeed no attempt is made to show good cause for redacting portions of a document under the
14 standards of the Discovery Act, the Court should not allow the redaction of those portions.

15 Overstock.com, Inc. v. Goldman Sachs Grp., Inc., 231 Cal.App.4th 471, 486 (2014).

16 Furthermore, the redacted portions of the Memorandum are not, and do not refer to discovery
17 materials, and so Facebook’s argument that the Civil Discovery Act applies is dubious at best. As
18 Facebook does not make any attempt to show good cause with regard to these redactions, these
19 redactions should not be allowed to stand.

20 **II. FACEBOOK CANNOT ASK THE COURT TO SEAL PUBLICLY AVAILABLE INFORMATION.**

21 Facebook summarily states that the materials in Exhibit 2 contain quotes of documents
22 attached to the Declaration of David Godkin in Opposition to the Individual Defendants’ Anti-
23 SLAPP Motion, but makes no effort to prove this contention. Mot. To Seal 3:8-9. In fact, most of
24 the material within the documents are extremely generalized summaries of allegations plainly
25 contained within the four corners of the Fifth Amended Complaint and other filings available on
26 the public docket. *See* Fifth Amended Complaint ¶ 101 (45:3-6), ¶ 128 (56:18-23), ¶ 209 (73:5-
27 13), ¶ 214 (76:1-12); Fourth Amended Complaint ¶ 4 (3:24-4:4), ¶ 203 (63:18-26). Materials that
28 have been publicly disclosed should not be sealed. *Id.*, 507. Facebook did not bring a Motion to

1 Seal these filings, and are time-barred from doing so now. Savaglio v. Wal-Mart Stores, Inc., 149
2 Cal.App.4th 588, 601 (2007). Accordingly, there is no basis for the sealing of Exhibit 2 and
3 Facebook's Motion must be denied as to that exhibit.

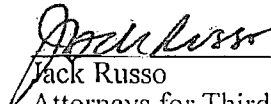
4 CONCLUSION

5 Facebook's Motion to Seal lacks substance and should be denied. Any other result
6 negates the California Rules of Court and First Amendment Principles embodied in both the U.S.
7 and California Constitutions

8
9 Dated: April 12, 2019

Respectfully submitted,
COMPUTERLAW GROUP LLP

10 By:


11 Jack Russo
12 Attorneys for Third Parties
13 THEODORE KRAMER and
14 THOMAS SCARAMELLINO
15
16
17
18
19
20
21
22
23
24
25
26
27
28